IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2495 of 2002

Date of Decision: 11.12.2006

Charanjit Kaur & Ors. ...Appellants

Vs.

Prem Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.G.S.Sandhawalia, Advocate,
for the appellants.

Mr.A.S.Gill, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

This appeal arises out of an award passed by the learned Motor Accident Claims Tribunal, Jalandhar vide which claim petition filed by the claimant-appellants was allowed and compensation to the tune of Rs.9 lac was awarded in favour of the claimants along with interest at the rate of 9 per cent per annum from the date of filing of the petition till actual realisation. It was further held that each of claimants would be entitled to a sum of Rs.2,25,000/-.

The case set up by the claimants was that the deceased Nirmaljit Singh resident of Urban Estate, Jalandhar was proceeding

towards his house on 25.4.1999 at about 10.30 A.M. on his Scooter No.PB-08-A-3505 and he was going on his left side of the road. The Jeep bearing No.PJP-338 driven by Prem Singh respondent No.1 at a high speed rashly and negligently struck against the scooter from behind resulting in multiple injuries to him. The driver escaped from the spot along with his vehicle. One Kamaljit Singh was coming just behind on other scooter and was following Nirmaljit Singh. He saw the occurrence and took Nirmaljit Singh to Kahlon Nursing and Maternity Home for treatment. Nirmaljit Singh was thereafter referred to Christian Medical College and Hospital, Ludhiana where he died on 26.4.1999. Thereafter, Kamaljit Singh lodged the FIR at the Police Station. Death of Nirmaljit Singh had taken place in motor vehicular accident caused by Jeep No.PJP-338 driven by Prem Singh, respondent No.1. Said jeep was owned by Punjab State. Nirmaljit Singh was aged about 43 years and was Manager (Inspection) Department, Punjab and Sind Bank and was earning a sum of Rs.19,696.97P. The widow and the minor children of the deceased filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs.30 lacs.

On notice having been issued the claim was contested by the respondents. While respondents No.1 admitted that the case has been registered at Police Station, Division No.7, Jalandhar against him but he claimed that it was a false case. He claimed that on the date of the occurrence the deceased was driving his Scooter No.PB-08-A-3505 towards Urban Estate, Phase-II, Jalandhar whereas respondent No.1 was following on the scooter at some distance. It was further claimed that when the scooter reached near the place of occurrence then the scooterist without giving any indication turned towards the road all of a sudden and he took the turn

without bothering for the traffic coming from behind. It was in this process that the deceased along with the Scooter No.PB-08-A-3505 came in front of the vehicle driven by respondent No.1 who applied brakes and had taken his vehicle towards the right side of the road to avoid the impact with the scooter of the deceased. In this process the deceased got perplexed and struck his scooter against electric pole and sustained injuries. It was claimed that the accident had occurred clearly due to to rash and negligent act of the deceased and respondent No.1 was not at fault. It was further claimed that the respondents were not liable to any the compensation.

Respondents No.2 to 4 in a separate written statement admitted that the Punjab State was owner of the vehicle in question but pleaded that the accident did not take place due to the fault of the jeep driver but it was due to the fault of the scooterist himself as detailed by respondent No.1.

On the pleadings of the parties the learned Tribunal framed the following issues:-

1. Whether Nirmaljit Singh died in motor vehicle accident caused by rash and negligent driving of Jeep bearing No.PJP-338 by Prem Singh driver respondent No.1 on 25.4.1999 at Jalandhar? OPP

2. Whether the claimants are entitled to compensation, if so, to what extent and from which of the respondents?OPP

3. Relief.

The learned Tribunal decided issue No.1 in favour of the claimant-appellants and held that Nirmaljit Singh had died in motor vehicular accident caused by rash and negligent driving of Jeep No.PJP-338 driven by Prem Singh driver, respondent No.1 on 25.4.1`999. As a result of

this on issue No.2 the appellant-claimants were held entitled to compensation to the tune of Rs.12 lac. However, it was further held that out of this 25 per cent was liable to be deducted towards contributory negligence and accordingly, it was held that the claimants were entitled to Rs.9 lacs as compensation.

In this appeal cross-objections have also been filed by the driver of the offending jeep challenging therein the finding recorded by the learned Tribunal on issue No.1 as well as on issue No.2.

Mr. G.S.Sandhawalia, learned counsel for the appellants firstly contended that the findings of the learned Tribunal that 25 per cent of the compensation was liable to be deducted on account of contributory negligence prima facie cannot be sustained. The contention of the learned counsel for the appellants was that the learned Tribunal on issue No.1 had given a categoric finding that the accident had occurred due to rash and negligent driving of jeep by respondent No.1 and no finding was recorded regarding the contributory negligence and therefore, it was not open to deduct 25 per cent of the compensation by attributing contributory negligence to the deceased without there being any material on record.

I find force in this contention of the learned counsel for the appellants. It may be noticed that the learned Tribunal on issue No.1 on appreciation of evidence came to a positive finding that the jeep had struck against the scooter from behind which further led to striking of the scooter in the electric pole leading to the injuries to the person of Nirmaljit Singh which ultimately led to his death on the next date. It was also observed that the jeep was at high speed being driven in rash and negligent manner which struck the scooter leading to accident. Thus, there was no scope of

attributing contributory negligence to the deceased Nirmaljit Singh. It may be noticed here that the learned Tribunal merely observed that if there was some fault of Nirmaljti Singh then some adjustment can be made at the time of calculating the compensation by making reduction on account of contributory negligence. However, it has to be held that the death of Nirmaljit Singh took place in motor vehicular accident due to rash and negligent driving of Jeep No.PJP 338 by Prem Singh. Thus, it would be seen that in the absence of finding on contributory negligence or attribution of some overt act on the part of the deceased no finding of contributory negligence could be recorded nor deductions made.

Learned counsel appearing on behalf of the Cross-objector vehemently argued that no accident had occurred with the offending jeep and therefore, the finding on issue No.1 was liable to be reversed. However, I find no merit in this contention as the learned Tribunal on consideration of evidence has decided issue No.1 in favour of appellant-claimants. It may further be noticed that the deceased was taken to Kahlon Nursing and Maternity Home by Mr. Prem Singh and Mr.Sohal S.D.O. Of the Department where the first information given was that it was case of road side accident being hit by a jeep. In view of this the contention of the learned counsel for the Objector that no accident had occurred could not be accepted and not fault can be found with the finding recorded by the learned Tribunal on issue No.1. Thus, the finding on issue No.1 is affirmed.

Learned counsel for the appellants has challenged the finding on issue No.2 primarily on the ground that by way of documentary evidence it was proved on record that the salary of the deceased was Rs.18689.97P as would be clear from Ex.A.4 and carry home salary after certain

deductions net payable Rs.9057/-. The contention of the learned counsel was that the deductions made were of a nature which could not be deducted from the salary as these deductions were ultimately to accrue to the benefit of the deceased. Thus, the learned counsel for the appellants submitted that the income of the deceased which was treated as Rs.12,000/- per month cannot be sustained. Thus, according to the learned counsel for the appellants the salary of the deceased was to be taken as Rs.18670/- and in addition there to the court was also to see the future prospectus as the deceased was likely to get further promotions in his career.

I find force in this contention and hold that the salary of the deceased was to be taken to be approximately Rs.19,000/- and after certain deductions which were ultimately to accrue benefit to the deceased the salary was to be taken as Rs.15,000/- and keeping in view the family of the deceased dependency is to be assessed at Rs.12000/- per month.

As the age of the deceased was 43 years the multiplier to be applied is to be taken as 15 and accordingly the compensation payable to the claimants would come to Rs.21,60,000 (12000 x 12 x 15) and in addition thereto the claimants would also be entitled to a sum of Rs.40,000/- towards medical expenses incurred by the claimants. The appellants would also be entitled to consortium of Rs.5000/- and funeral expenses of Rs.2,000/- and thus, the total compensation payable to the appellants comes to Rs.22,07,000/-.

Accordingly, the finding on issue No.2 is reversed and it is held that the appellants are entitled to a compensation of Rs.22,07,000/-. The appellants shall also be entitled to interest at the rate of 9 per cent per annum on this amount till realisation. However, interest would be payable

from the date of award and not from the date of filing of the petition.

In view of above, the appeal filed by the appellants is partly allowed and cross objections filed by respondent No.1 is dismissed. The compensation so awarded has to be shared equally between the claimants. The liability is held to that of State Govt. as accident has occurred when the driver was performing his official duty. The master has to be held liable for the act of this servant.

(Vinod K.Sharma)
December 11,2006 **Judge**
rp